



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200808031

NOV 27 2007

Uniform Issue List: 408.03-00

T:EP;RA:UK

Legend:

Taxpayer A =

IRA X =

IRA Y =

Amount D =

Company B =

Company C =

Date 1 =

Date 2 =

Date 3 =

Dear :

This is in response to your letter dated April 1, 2007, submitted by your authorized

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representative, for a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the Code).

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age , represents that on Date 1 he initiated a trustee-to-trustee transfer of the corpus of IRA X from Company B to Company C into IRA Y. Taxpayer A further represents that prior to the trustee-to-trustee transfer he had been receiving substantially equal periodic payments from IRA X. After the trustee-to-trustee transfer he continued to receive substantially equal periodic payments from IRA Y. However, on Date 2, Company C made an extra payment to Taxpayer A from IRA Y of Amount D which was automatically deposited into a non-IRA checking account. Taxpayer A asserts that he failed to accomplish a timely rollover of Amount D within the 60-day period prescribed by section 408(d)(3) of the Code due to an error made by Company C in distributing Amount D from IRA Y. Company C in a letter dated March 27, 2007, admitted that it mistakenly processed a second distribution from IRA Y on Date 2. This error was neither detected by the trustee of IRA Y or Taxpayer A until Date 3. Taxpayer A further represents that Amount D has not been used for any other purpose.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 72(t)(1) provides that if an employee or IRA owner receives any amount from a qualified retirement plan before attaining age 59 1/2, the employee's or IRA owner's income tax is increased by an amount equal to 10-percent of the amount that is includible in gross income unless one of the exceptions in section 72(t)(2) applies.

Section 72(t)(2)(A)(iv) provides, in part, that if distributions are part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the employee or joint lives (or joint life expectancy) of the employee and beneficiary, the tax described in section 72(t)(1) will not be applicable. Pursuant to section 72(t)(5), in the case of distributions from an IRA, the IRA owner is substituted for the employee for purposes of applying this exception.

Section 72(t)(4) provides that if the series of substantially equal periodic payments that is otherwise excepted from the 10 percent tax is subsequently modified (other than by reason of death or disability) within a 5-year period beginning on the date of the first payment, or if later, age 59 1/2, the exception to the 10-percent tax does not apply, and the taxpayer's tax for the year of modification shall increase by an amount which, but for the exception, would have been imposed, plus interest for the deferral period.

Section 2.02(e) of Revenue Ruling 2002-62, 2002-42 I.R.B. 710, provides, in part, that a modification to the series of payments will occur if, after such date, there is (i) any addition to the account balance other than gains and losses, (ii) any nontaxable transfer of a portion of the account balance to another retirement plan, or (iii) a rollover by the taxpayer of the amount received resulting in such amount not being taxable.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if—

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented demonstrates that Taxpayer A failed to accomplish a timely rollover of Amount D because he was not aware that an error had been made by Company C and an extra payment of Amount D had been made from IRA Y.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D back into IRA Y. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount D will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling is limited to a request for a waiver of the 60-day rollover period. No opinion is expressed as to whether the payments from IRA X and IRA Y to Taxpayer A constitute substantially equal periodic payments within the meaning of Code section 72(t)(2)(A)(iv). Further, no opinion is expressed as whether the trustee-to-trustee transfer from Company B of Amount D to Company C, the extra payment by Company C to Taxpayer A, or the exercise of this waiver of the 60-day rollover period by Taxpayer A would cause a modification of substantially equal periodic payments within the meaning of Code section 72(t)(4). Finally, no opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact _____, at _____.

Sincerely yours,

for *Ada Perry*
Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: